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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.A., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

ROBERT B.,

Defendant and Appellant.

D054875

(Super. Ct. No. J516897)

APPEAL from a judgment of the Superior Court of San Diego County, Laura J. Birkmeyer, Judge. Reversed and remanded with directions.

Robert B. appeals the judgment terminating his parental rights (Welf. & Inst. Code, § 366.26) over his child, A.A. Robert contends the San Diego County Health and Human Services Agency (the Agency) did not follow the notice mandates of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) and the court therefore committed

reversible error by terminating parental rights. The Agency contends no ICWA notice was required. It concedes, however, there was not an adequate ICWA inquiry, requiring a limited remand for a proper inquiry and, if necessary, ICWA notice. A.A.'s prospective adoptive parent and A.A.'s appellate counsel join in the concession. We reverse and remand for compliance with ICWA.

BACKGROUND

In March 2008 the Agency filed a dependency petition for newborn A.A. based on his positive test for cocaine, the drug use of his mother S.W., her lack of prenatal care, and her desire to relinquish A.A. for adoption. A.A. was detained in a foster home that later became a placement.

S.W. refused to disclose the identity of A.A.'s father and said she had no Indian heritage. At the April 2008 jurisdictional and dispositional hearing, the court found ICWA did not apply. After the hearing, S.W. told the Agency that Robert was A.A.'s father. Beginning on April 9, the Agency contacted Robert several times, instructing him how to request appointed counsel and establish paternity.

Robert first appeared in court at the September 2008 six-month review hearing. The court added his name to the petition as an alleged father, appointed counsel for him, ordered paternity testing, and set a section 366.26 hearing for January 2009. Robert completed a Parental Notification of Indian Status form (Judicial Council Forms, form ICWA-020). On the form he stated he might have Cherokee heritage, he and A.A. were or might be members of a Cherokee tribe or eligible for membership, and A.A.'s paternal great-grandfather was a member of a Cherokee tribe.

Robert missed his paternity test because he was arrested and jailed. In December 2008 the court ordered that he be tested in jail. Robert was tested on December 15. In January 2009 the court continued the section 366.26 hearing to March. The paternity test results, received in February, showed a 99.99 percent probability Robert was A.A.'s biological father. In March the court found Robert was the biological father and terminated parental rights.

DISCUSSION

S.W. never completed a Parental Notification of Indian Status form. The court should have directed her to do so. (Cal. Rules of Court, rule 5.481(a)(2).) Because Robert stated he might have Cherokee heritage, the court should have inquired further once it found that he was the biological father. (*In re Shane G.* (2008) 166 Cal.App.4th 1532, 1538-1539; cf. *In re E.G.* (2009) 170 Cal.App.4th 1530, 1533.) We reverse the judgment and remand the case to the juvenile court for a proper ICWA inquiry, a finding whether ICWA applies, and any necessary ICWA notice and further proceedings in compliance with ICWA. If, after notice, a tribe claims A.A. is an Indian child, the court shall proceed in conformity with ICWA; if no tribe claims A.A. is an Indian child, the court shall reinstate the judgment. (*In re Francisco W.* (2006) 139 Cal.App.4th 695.)

DISPOSITION

The judgment is reversed. This case is remanded to the juvenile court with directions to conduct a proper ICWA inquiry, determine whether ICWA applies, and, if necessary following the inquiry and determination, to order ICWA notice and conduct any further proceedings in compliance with ICWA. If, after notice, a tribe claims A.A. is an Indian child, the court shall proceed in conformity with ICWA; if no tribe claims A.A. is an Indian child, the court shall reinstate the judgment.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

McINTYRE, J.